IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 226 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURESHBHAI KHIMCHAND SHAH

Appearance:

1. Criminal Revision Application No. 226 of 1999

Mr.P.R.Abichandani, A.P.P. for Petitioner=State.

MR JB PARDIWALA for Respondent No. 1,3-8

RULE UNSERVED for Respondent No. 2

UNSERVED-EXPIRED (N) for Respondent No. 9

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/10/2002

ORAL JUDGEMENT

1. This Criminal Revision application is preferred by the State of Gujarat against the order passed by Sessions Judge, Valsad, at Navsari, below Exh.1 in Sessions Case no.5/1994 on December 13, 1998.

2. The said application was tendered by the Public Prosecutor, Valsad at Navsari, under Section 321 of the Criminal Procedure Code for withdrawal of the prosecution against the accused persons in Sessions Case who are respondents herein. Learned Sessions Judge after considering the submissions of learned A.P.P. observed that the offence is of a serious nature where police officers have been attacked. Even an attempt is made to snatch the service revolver of one of the police officers; the State has failed to show how such withdrawal would maintain public interest; that there is direct involvement of the accused persons in the incident which resulted into disturbance of public peace and harassment to the traffic, and ultimately, rejected the application.

3. To appreciate the contentions raised before this Court, brief facts of the case need to be stated:

The respondents herein are transport operators who were aggrieved by imposition of service tax, and therefore, while supporting the call of strike, got indulged into stopping of vehicles on the road on July 3,1992. The police arrived at the spot and tried to establish law and order. The respondents herein did not spare even the police, and it is alleged that they assaulted the police and one of them snatched away the service revolver of one of the police personnel. The offences punishable under Sections 395, 397, 326, 362, 341, 337, 186 and 427 of the Indian Penal Code and Section 135 of the Bombay police Act were registered against them, and ultimately, chargesheet came to be filed in the Court of J.M.F.C., Pardi , who in turn registered Criminal Case no.1866/1993. As the offences were triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions and Sessions Case no.5/1994 came to be registered.

During this time, much water had flown under the bridge. The service tax came to be withdrawn and Government also found that the prosecution deserves to be withdrawn in larger interest of public, and therefore, learned Additional Public Prosecutor appearing before the Sessions Court was moved to file appropriate application. Learned A.P.P. tendered the application Exh.1 before the Sessions Court which has been rejected.

4. Learned A.P.P. Mr. Abichandani appearing for the State submitted that though not stated in clear terms or in detail, learned A.P.P. had considered the papers and arrived at his independent conclusion about the justification for withdrawal of the prosecution. The trial Court, therefore, ought not to have entered into the arena of weighing the grounds of withdrawal. Mr. Abichandani places on record an affidavit sworn by Mr. Vijay D. Naik, the then Public Prosecutor of District Valsad, at Navsari, who had filed application Exh.1 in the said Sessions Case. The affidavit explains and states in detail as to what were the factors considered by the learned A.P.P. and from what angle before arriving at the conclusion that application under Section 321 for withdrawal of the prosecution is justified. The affidavit is taken on record. Mr. Abichandani submitted that as per the decision of the Apex Court in Abdul Karim etc. etc. v. State of Karnataka and others etc. etc., 2001 CRI.L.J. 148, the Court has only to examine whether the Public Prosecutor has acted in good faith or not, and it is not for the Court to weigh the material. The Court has to be satisfied that the Public Prosecutor has considered the material, and in good faith reach the conclusion that the withdrawal from prosecution will serve public interest. Mr. Abichandani, therefore, submitted that this exercise is not undertaken by the Sessions Court. The Sessions Court has considered factors which were not supposed to be considered, and therefore, the Revision may be allowed.

5. Learned Advocate Mr. Pardiwala appearing for the respondents has obviously supported the Revision Application. He has drawn attention of this Court to the decision of the Madras High Court in Durai Murugan and others vs. State, 2001 CRI.L.J. 215 and Sheo Nandan Paswan v. State of Bihar and others, AIR 1987 SC 877, in which the Apex Court observed that all that is necessary to satisfy the Section is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that exercise of discretion by the Public Prosecutor is proper. The Madras High Court observed that it is well settled that in refusing or granting consent under Section 421, Criminal Procedure Code paramount consideration must be the interest of administration of justice. Mr. Pardiwala has drawn attention of this Court to the decision of the Apex Court in State of Orissa v. Chandrika Mohapatra and others, AIR 1977 SC 903 wherein the Apex Court has observed that no hard and fast rule can be laid down nor can any categories of cases be defined in which consent should be

granted or refused. It must ultimately depend on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice because the objective of every judicial process must be the attainment of justice. He, therefore, urged that the Revision may be allowed.

6. Having regard to the rival side contentions, the legal position as emerging from various pronouncements of the Apex Court and other High Courts is that a Court while considering an application for withdrawal of prosecution by the Public Prosecutor under Section 321 of Criminal Procedure Code has to ensure that although a decision may have been taken by the Government to withdraw from prosecution and direction may have been issued to the Public Prosecutor, it is for the Public Prosecutor to apply his mind to all the relevant material and in good faith to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the Court has to be satisfied, after considering all that material that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor acting in good faith is of the opinion that his withdrawal from prosecution is in public interest and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice. Necessarily, therefore, application under Section 321 must aver that Public Prosecutor is in good faith satisfied on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and that it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out briefly but concisely in the application or in an affidavit annexed to the application or, in a given case, placed before the Court, with its permission in a sealed envelope. The Court has to give an informed consent. The Court, therefore, has to be satisfied with the material to reasonably lead to a conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest, but it is not for the Court to weigh the material. The Court must be satisfied that the Public Prosecutor has considered the material in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest, and if upon such a consideration, the Court accords consent, it must make such order on the application as will indicate to a higher Court that it has done all that the law requires it to do before granting consent.

7. In Sheo Nandan Paswan v. State of Bihar and

others, AIR 1987 SC 877, the Apex Court observed in paragraphs 70 and 71 as under:

"70. The Section gives no indication as to the grounds on which the Public Prosecutor may make the application or the considerations on which the Court is to grant its consent. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. The judicial function implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes."

"71. The Court's function is to give consent. This Section does not obligate the Court to record reasons before consent is given. However, I should not be taken to hold that consent of the Court is a matter of course. When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him, the Court exercises its judicial discretion by considering such materials and on such consideration either gives consent or declines consent. The section should not be construed to mean that the Court has to give a detailed reasoned order when it gives consent. If on a reading of the order giving consent, a higher Court is satisfied that such consent was given on an overall consideration of the materials available, the order giving consent has necessarily to be upheld."

8. With this settled proposition of law, if the facts of the present case are seen, it transpires that none of the respondents have any criminal antecedents. They are transport operators and were agitated by imposition of service tax. The agitation has ultimately persuaded the Government to withdraw the service tax. Ultimately, the Government also considered it fit to withdraw the prosecution against them, and it appears that an order came to be passed by the District Magistrate, Valsad, also granting permission for withdrawal of the said case. Learned Public Prosecutor gave application Exh.1 stating these aspects and further stated in the application that for the above reasons as well as considering the material on record he is satisfied that there is justification for withdrawal from prosecution, and therefore, gave the said application. However, the application was not supported by an affidavit nor did it contain an averment that he is in

good faith satisfied on consideration of relevant material that withdrawal from prosecution is in public interest. The State has, however, filed an affidavit before this Court and it is stated therein that he has examined all the relevant material and interest of justice required that the case be withdrawn. He says that he had fully satisfied himself in good faith on consideration of all relevant material that no useful purpose is going to be served by prosecuting the accused persons in the facts and circumstances.

9. It has to be noted that about ten years have passed after the incident. There has been no subsequent involvement of any of the respondents in any offence and in the light of these observations, this Court is satisfied about the decision taken in good faith by the Public Prosecutor, Valsad at Navsari, of withdrawing from prosecution. It has to be observed that material is not required to be weighed by the Court as stated by the Apex Court in Abdul Karim etc. etc. v. State of Karnataka and others etc. etc. 2001 CRI.L.J. 148, and therefore, the Sessions Court was not justified in making observtions on merits of the prosecution case. The order, therefore, deserves to be set aside by accepting this Revision Application.

The Revision is accepted. The order impugned herein passed by the learned Sessions Judge Valsad at Navsari below Exh.1 in Sessions Case no.5/1994 dated December 13,1998 is hereby set aside. The application Exh.1 preferred by the Public Prosecutor before the Sessions Court seeking withdrawal of the prosecution in Sessions Case no.5/1994 arising out of Udyognagar Police Station CR. No.I 133/1992 and Criminal Case no.1866/1993 of the Court of J.M.F.C., Pardi is allowed. The respondent-accused are discharged from the offences that they are charged with. Rule is made absolute.

(A.L.Dave,J.)

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